Law of Armed Conflict

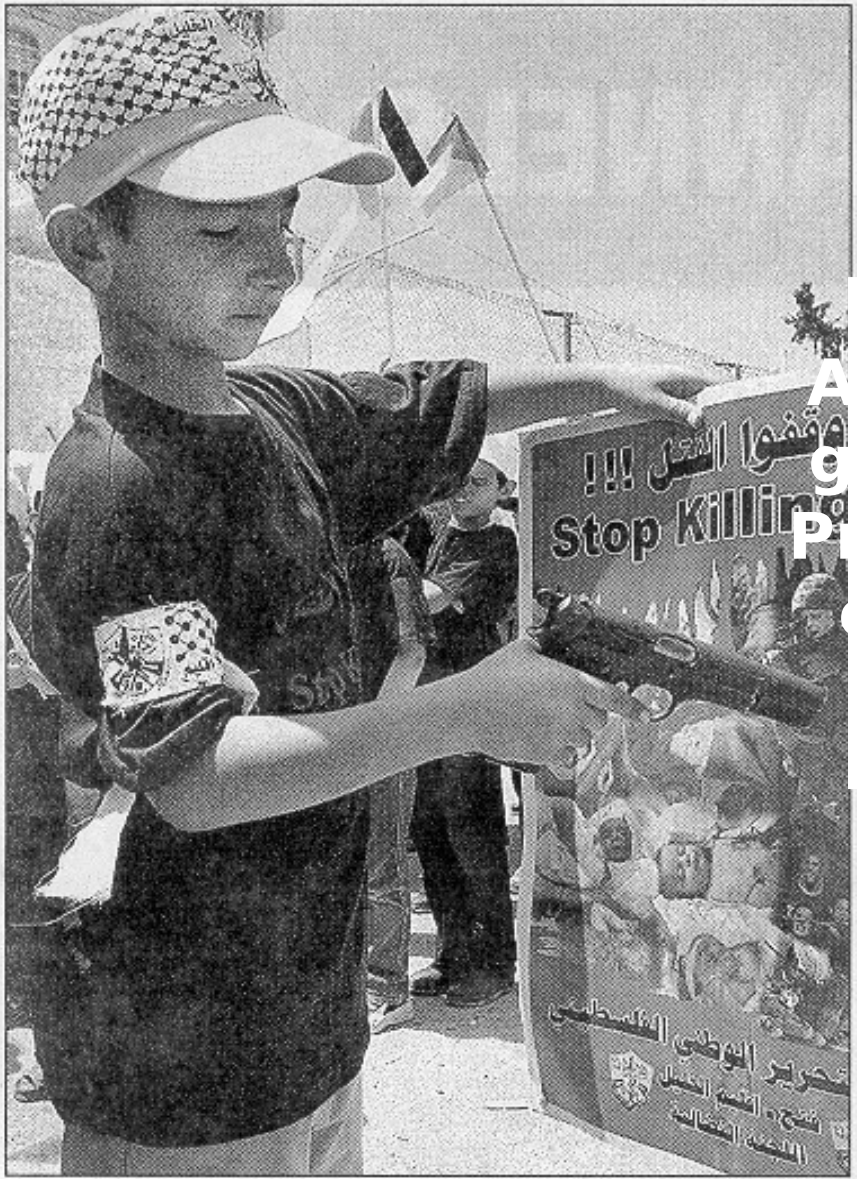
Classification:
UNCLASSIFIED
DERV: N/A
DECL: N/A

This Briefing is

UNCLASSIFIED

DURING TIMES OF WAR, MILITARY FORCES MUST ACT QUICKLY AND DECISIVELY!
Judge
MILITARY LAWYERS
"...IF THAT'S OK WITH YOU!"

Israel eases rules of engagement



Soldiers get more discretion to fire on Palestinians

By Jack Kelley
USA TODAY

ment, which limited firing of live rounds to cases in which Palestinians gunmen shot first and soldiers could identify the source of fire, formed part of a June 13 truce mapped out by CIA Director George Tenet.

"In the light of the increase in Palestinian acts of violence and out of the (army's) commitment to al-

suspected Palestinian gunmen killed an Israeli Arab on Tuesday as he drove near the Jewish settlement of Tzofim. In Gaza, Israeli troops opened fire at stone-throwing Palestinian demonstrators near Rafah. Four people were wounded, witnesses said. At least two explosive devices were detonated against Israeli troops in the West Bank. No one was injured.

The Israeli army had outlined more rigid field restrictions on its soldiers in the West Bank and Gaza

This new announcement comes as part of the Israeli government's efforts to escalate its violence."

The Palestinian Authority wrote to President Bush and Secretary of State Colin Powell on Monday to urge Washington to play a broader role in a truce-to-talks plan devised by a panel led by former U.S. senator George Mitchell.

On Tuesday, Bush held to his policy of deferring peacemaking moves until the violence stops.

"We continue high-level con-

Russian tactics, techniques, and procedures:

“I remember a Chechen female sniper. She didn’t have a chance of making it to the authorities. We just tore her a two armored personnel carriers, having tied her ankles w cables. There was a lot of blood, but the boys needed it. this, a lot of the boys calmed down. Justice was done, an was the most important thing for them.”

“We would also throw fighters off the helicopters before The trick was to pick the right altitude. We didn’t want t die right away. We wanted them to suffer before they di Maybe it’s cruel, but in a war, that’s almost the only way the fear and sorrow of losing your friends.”

ARE YOU READY FOR WAR?

Terminal Learning Objective

Describe the legal ramifications of target selection and the ability to differentiate legal from illegal targets.

OVERVIEW

- **BACKGROUND & BASICS OF LOAC**
- **LOAC AS APPLIED TO TARGETING**
- **LAWFUL WEAPONS & EMPLOYMENT**
- **RULES OF ENGAGEMENT**

Why are we concerned with LOAC?

- **US is committed to promoting favorable international norms that contribute to international security, stability, and peace. International law is one of the tools used to pursue these norms.**

- **Directs combat power – target selecti**

LAW OF WAR

That part of international law that regulates the conduct of armed hostilities. It is often termed the law of armed conflict.

Joint Publication 1-02, Dictionary Of Military and Associated Terms

EXTREME LOAC VIOLATOR?

“Until we can repopulate Georgia, it is useless for us to occupy it; but the utter destruction of its roads, houses and people will cripple their military resources. I can make this march, and make Georgia howl.”

-General William T

SOURCES OF THE LAW OF WAR

- **INTERNATIONAL AGREEMENTS**
  - **Treaties**
  - **Conventions**
  - **Protocols**
- **CUSTOMARY LAW (Ex: WWI Pilots)**
  - **Decisions of international courts**
  - **Writings of famous jurists**
  - **Practices of nations**
  - **Not static**

DOD LAW OF WAR PROGRAM

- **DOD DIR. 5100.77 (9 DEC 1998)**
  - **Each individual will receive law of war training commensurate with his or her duties and responsibilities**

- **POLICY**
  - **Observe and enforce law of war obligations**
  - **Program designed to prevent violations**
  - **Incidents (committed by or against U.S. will be promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action**

DoD DIR. 5100.77 (CONT)

- **Responsibilities**
  - **US forces shall comply with the Law of War**
    - **Presidential authority may determine not applicable**
  - **Legal advisers should be immediately available to commanders**
  - **Combatant Commanders shall ensure all plans, ROE, and directives receive legal review**

LAW OF WAR

- **JUS AD BELLUM**
  - **Under what circumstances was the use of military power legally and morally justified.**
- **JUS IN BELLO**
  - **What legal and moral restraints apply to the conduct of waging war.**
- **Operate independently: Jus Ad Bellum serves to prevent conduct; Jus In Bello serves to regulate or control conduct.**

JUS IN BELLO - CODIFICATION

- **Hague Law**
- **Geneva Law**

HAGUE LAW

- **Manual of the Laws of War on Land**
  - **Means and methods of warfare**
- **1899 HAGUE CONVENTIONS and DECLARATIONS**
  - **Martens Clause**

GENEVA TREATIES

- **Geneva Conventions of 1864, 1906, 1929**

- **Geneva Conventions of 1949**
  - **Wounded and sick in field**
  - **Wounded, sick, shipwrecked at sea**
  - **Prisoners of War**
  - **Civilians**

US POLICY

“The armed forces of the United States shall comply with the law of war in the conduct of military operations and related activities in armed conflict, however such conflicts are characterized.”

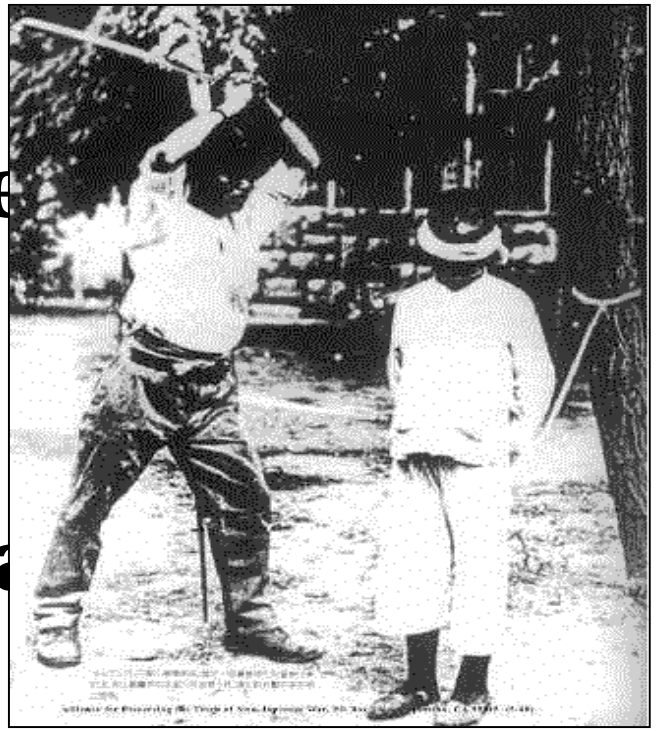
DoD Dir. 5100.77

QUESTION?

“These rules are all well and good, but if no one else follows them, why should we?”

LAW OF ARMED CONFLICT COMPLIANCE

- **Nations comply out of self-interest**
  - **Military Discipline**
  - **Public Opinion**
  - **Reciprocity**
  - **Restoration Of Pea**
  - **National Values**



LAW OF WAR ENFORCEMENT

- **Reprisal**
- **War crimes trials**
- **International community pressure**

LAW OF ARMED CONFLICT PURPOSES

- **Protect combatants and non-combatants from unnecessary suffering**
- **Facilitate the restoration of peace**
- **Control/mitigate harmful effects of war**
- **Not designed to impede legitimate**

LAW OF ARMED CONFLICT GENERAL PRINCIPLES

- **Military Necessity**
- **Proportionality**
- **Unnecessary Suffering**
- **Distinction**

MILITARY NECESSITY

- **Justifies those measures not forbidden by international law, and which are indispensable for securing the complete submission of the enemy as soon as possible.**
  - ***Is it a legitimate military target***
  - ***Will a definite military advantage ensue***

PROPORTIONALITY

- **Prohibits occurrence of collateral civilian casualties so excessive in nature when compared to the expected military advantage to be gained as to be tantamount to the intentional attack of civilians, or to a wanton disregard for the safety of the civilian population.**

- ***Issues of weapons choice and tactics.***

UNNECESSARY SUFFERING

- **Forbids the employment of arms, projectiles, or material calculated to cause unnecessary suffering. This Concept also extends to destruction of property.**

DISTINCTION

- **The customary international law obligation of parties to a conflict to engage only in military operations the effects of which distinguish between the civilian population and combatant forces, directing the application of force solely against the latter.**

INCIDENTAL INJURY/ COLLATERAL DAMAGE

- **Injury or death to noncombatants**
- **Damage or destruction to civilian objects**
  - **Additional?**

INCIDENTAL INJURY/ COLLATERAL DAMAGE

- **Not unlawful if it occurs during the engagement of a legitimate target**
- **Must not be excessive in lieu of military advantage anticipated by the attack**
- **Commander’s obligation to minimize**

STATUS DURING INTERNATIONAL ARMED CONFLICT

- **Combatant**
- **Noncombatant**
- **Unlawful Combatant**

COMBATANTS AND NONCOMBATANTS

- **Principle of Distinction**
  - **Only combatants may participate directly in hostilities**
  - **Noncombatants must refrain from hostile activities**
  - **Noncombatants may not be the object of intentional attack**

LAWFUL COMBATANTS

Geneva Convention Definition:

Anyone engaging in hostilities in an armed conflict on behalf of a party to the conflict.

“…a belligerent attains combatant status by merely carrying his arms openly during each military engagement…”

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COMBATANT STATUS

- Geneva Convention Definition:
  - Members of Armed Forces/Lawful Combatants

1. Under Responsible Command
2. Distinctive Sign Recognizable at a Distance
3. Carry arms openly
4. Conduct operations in accordance with law of war

NONCOMBATANTS

- **Civilians**
- **Medical personnel**
- **Chaplains**
- **Prisoners of war**
- **Wounded, sick, shipwrecked, aircrew parachuting**
- **Media**

Hors de Combat: **Protected persons who are "out of combat"**

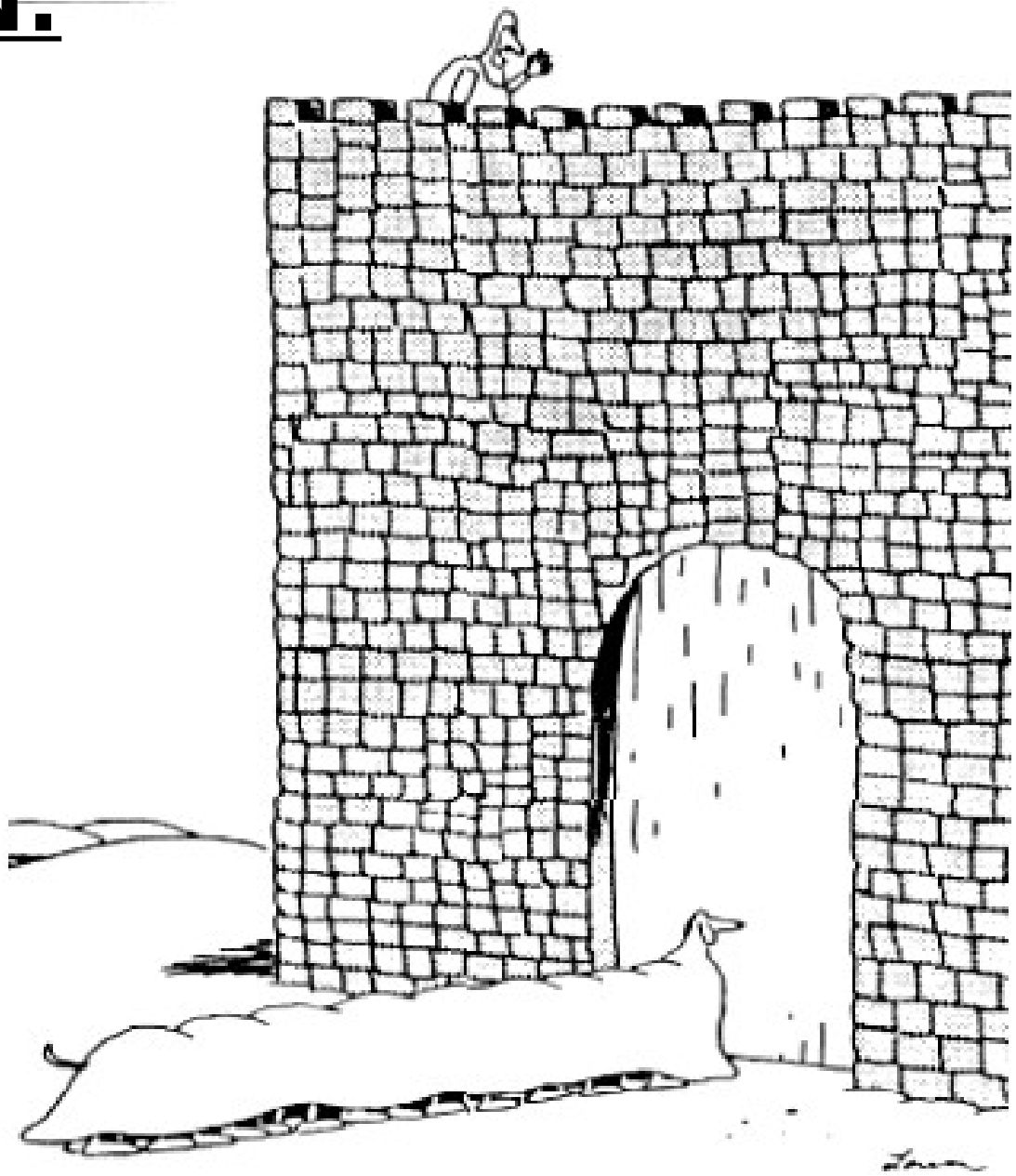
UNLAWFUL COMBATANTS

- Mercenaries
- Terrorists
- Someone on own program

"…can be a civilian who is participating in the hostilities or a member of the armed forces who violates the laws of war."

➢ **Does not include "Levee in Masse"**

DECEPTION:



"Open the gate! It's a big weiner dog!"

DECEPTION

- **Ruses and Stratagems**
  - **Lawful Deceptions**
    - **Decoys**
    - **Surprise**
    - **Camouflage**
    - **Feigned Movement**
    - **False Communication**

PERFIDY

- Unlawful deceptions
- Misuse of protected statu
  signs and symbols
- Examples
  - False SOS/Mayday
  - Feigned Surrender
  - Misuse of Red Cross Symbol
  - Misuse of Protected Platform

SURRENDER

- **Onus on person or force surrendering to communicate intent to surrender**
- **Captors must respect (not attack) and protect (care for) those who surrender (no reprisals)**

OVERVIEW

- BACKGROUND & BASICS OF LOAC
- LOAC AS APPLIED TO TARGETING
- LAWFUL WEAPONS & EMPLOYMENT
- RULES OF ENGAGEMENT

TARGETING BOARD ANALYSIS

- **Is the proposed object a lawful target?**
- **Is it necessary to destroy the target?**
- **What is the appropriate weapon to use?**
- **Will the attack cause disproportionate collateral damage?**

PRINCIPLES OF TARGETING

- **Must distinguish between combatants and noncombatants so as to spare noncombata much as possible**

MILITARY OBJECTIVES

- **4 Elements that allow targets to be lawful military objec**

1. **Nature- T-72 tank**
2. **Location- Mosque near SCUD B**
3. **Purpose- LOC in City**
4. **Use- Civilian airfield used by ilitary**

MILITARY OBJECTIVES

- **Lawful military objectives must:**
  - **Contribute to the enemy's warfighting/war sustaining effort <u>and</u>**
  - **Destruction would constitute a definite military advantage**

A POTENTIAL TARGET LIST MIGHT INCLUDE THE FOLLOWING:

- Leadership command facilities
- Electricity production facilities

- Telecommunications and command, control, and communication nodes
- Strategic integrated air defense systems
- Air forces and airfields
- NBC weapons research, production, and storage facilities
- Missiles, launchers, and production and storage facilities
- Naval forces and port facilities
- Oil refining and distribution facilities
- Railroads and bridges
- Military forces in the theater of operations
- Military storage and production sites

DESERT STORM TARGET SETS:

- Leadership command facilities
- Electricity production facilities

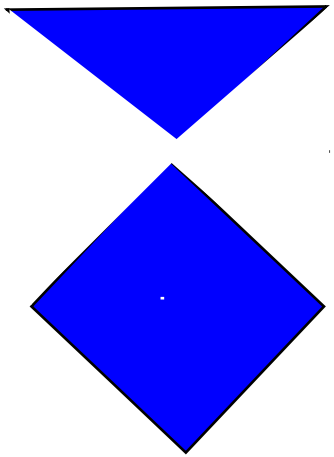
- Telecommunications and command, control, and communication nodes
- Strategic integrated air defense systems
- Air forces and airfields
- NBC weapons research, production, and storage facilities
- Scud missiles, launchers, and production and storage facilities
- Naval forces and port facilities
- Oil refining and distribution facilities
- Railroads and bridges
- Army forces in the Kuwaiti theater of operations
- Military storage and production sites

Positive Target dentificatio

•Positive Target Identification. Positive Identification of Targets (PID) is required prior to engagement. PID is a "Reasonable Certainty" that the object of attack is a legitimate military target.

•**WHAT THIS MEANS**: Comply with the Law of War concerning discrimination of targets. PID is a determination based on reasonable military judgment that can be established by a variety of methods, such as

UNLAWFUL TARGETS



- **Noncombatants**
- **Civilian Objects**
  - **Civilian property and activities not used to support or sustain the enemy's warfighting capability**
    - **Undefended places**
    - **Protected places (medical & humanitarian relief)**
    - **Places of culture/religion**

ACCOUNTABILITY RENDULIC RULE

- **Law typically allows destruction of civilian property, if military circumstances dictate.**
- **Decision makers necessarily have to make their decisions on the basis of their assessment of the information from all sources available to them at the relevant time, and post-event reviews must be made on the same basis.**

FUTURE TARGETING

- **What effect will the current smart bombs and the next generation brilliant munitions have on targeting and acceptable collateral damage / incidental damage?**

Information Operations

- New command to address these Issues (JFHQ-IO)
- Analysis remains the same, necessit unnecessary suffering, proportionality
- Example- Computer virus which indiscriminately attacks computers v. virus which targets specific systems

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WEAPONS REVIEW

- **DOD Instruction 5500.15**
- **All ammunition and weapons undergo a legal review.**
- **All issued ammunition and weapons are presumed to be legal and in accordance with LOAC.**

1980 CONVENTIONAL WEAPONS CONVENTION

- **Umbrella treaty with protocols**
  - **PROTOCOL I: Non-detectable Fragments**
  - **PROTOCOL II: Land Mines, Booby Traps, and Other Devices**
  - **PROTOCOL III: Incendiary Weapons**
  - **PROTOCOL IV: Blinding Laser Weapons**

1980 CWC PROTOCOL I - NON-DETECTABLE FRAGMENTS

- **Prohibits the use of any weapon, the primary effect of which is to injure by fragments which in the human body escape detection by X-rays**

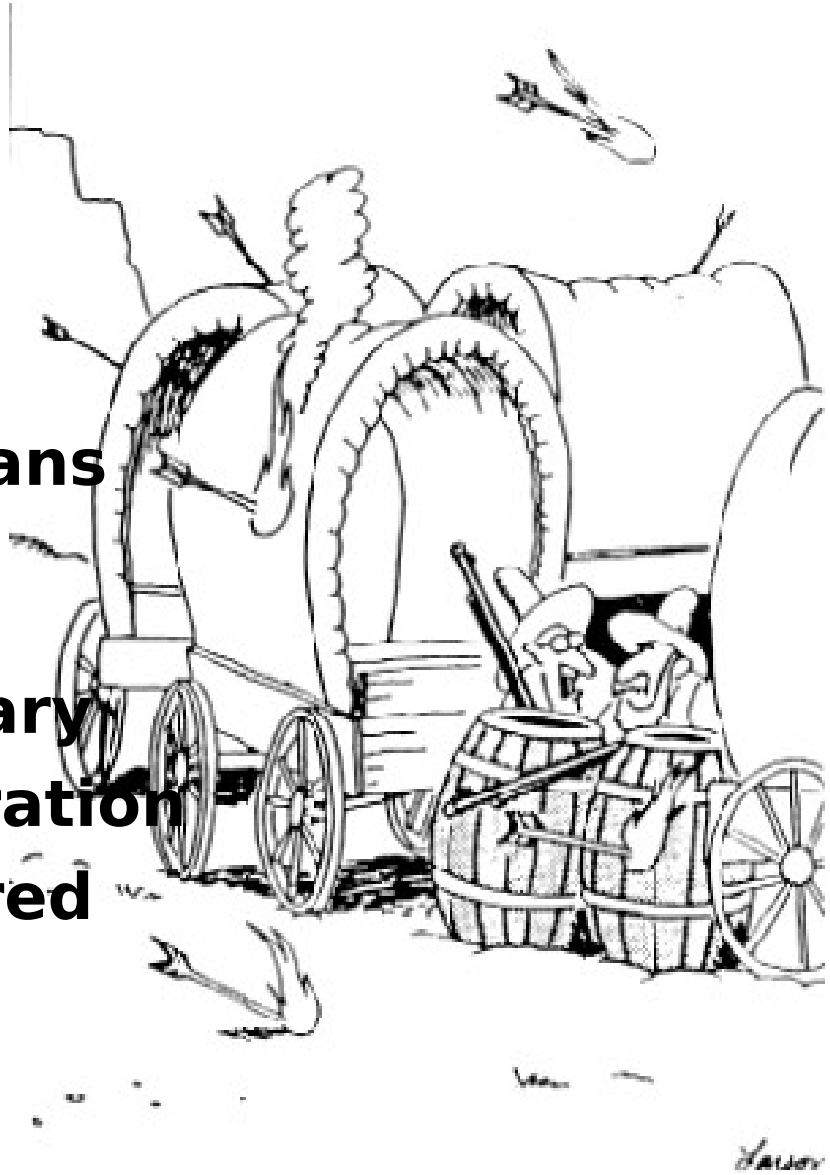
- **US is a party**

1980 CWC PROTOCOL II LAND MINES, BOOBY TRAPS, AND OTHER DEVICES

- **Indiscriminate use prohibited**
- **Recording of emplacement location required**
- **Detectability required (8 grams of iron)**
- **Self-destruct/neutralize capability required except in perimeter-marked area**
- **Booby trap of apparently harmless objects wounded, dead, etc. Prohibited**
- **US is a party**

INCENDIARY WEAPONS

- Set fire to objects or cause burn injuries
- Prohibits targeting civilians or civilian objects
- Prohibits targeting military objects within a concentration of civilians by air- delivered incendiaries
- US not a party



"Hey! They're lighting their arrows! . . . Can they DO that?"

1980 CWC PROTOCOL IV BLINDING LASER WEAPONS

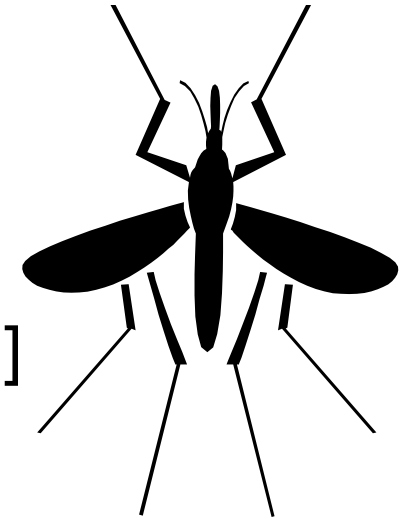
- **Prohibits employment of laser weapons specifically designed to cause permanent blindness to vision**
- **Incidental or collateral blinding by law[illegible] not prohib**

NUCLEAR WEAPONS

- **US Position**
  - **Not unlawful**
  - **Employment must be consistent with the Law of Armed Conflict**
    - **Weaponeering**
- **Nuclear Free Zone**

BIOLOGICAL WEAPONS

- **1972 Biological Weapons Convention**
  - **Prohibits development, production, stockpiling, acquisition, transfer, or retention**
  - **Required destruction by 1975**



CHEMICAL WEAPONS 1925 GAS PROTOCOL

- **Lethal/Incapacitating Agents**
- **Prohibits “First Use”**
- **Ratified by US in 1975**

French gas attack on German lines, Belgium, 1916

1993 CHEMICAL WEAPONS CONVENTION

- Prohibits development, production, acquisition, transfer, stockpiling, and use of chemical weapons
- Prohibits military preparations to engage in chemical warfare
- Prohibits use in retaliation
- Requires destruction of existing weapons and production facilities
- RIOT CONTROL AGENTS (RCA) and Herbicides prohibited as method of warfare

RIOT CONTROL AGENTS

- **Executive Order 11850 applies to use of RCAs; requires Presidential approval before first use in an armed conflict but…**
- **US policy: will not use except as defensive measure to save lives**
  - **Riot control in areas under effective US control including rioting POWs**
  - **Dispersing civilians who mask or screen a military attack**
  - **Rescue missions (downed aircrews) (SAR missions)**
  - **Police actions in our rear area**

NON-LETHAL WEAPONS

- **DEFINITION:**

  Non-lethal weapons are weapons that are explicitly designed and primarily employed so as to incapacitate personnel or material, while minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment.

  DoD DIR 3000.3

NON-LETHAL WEAPONS Examples

- **Carbon Fibers: They short the electrical circuits and disrupt the enemy's ability to access power**
- **Malodorants: safe chemical compounds that are highly repulsive to personnel (Vomit, Human Waste)**
- **Foams: Hardening or sticky foams**
- **Super Slick: 100 times more lubricant than oil**
- **Engine Disruption: Aerosolized solution becomes sticky and blocks air filter.**

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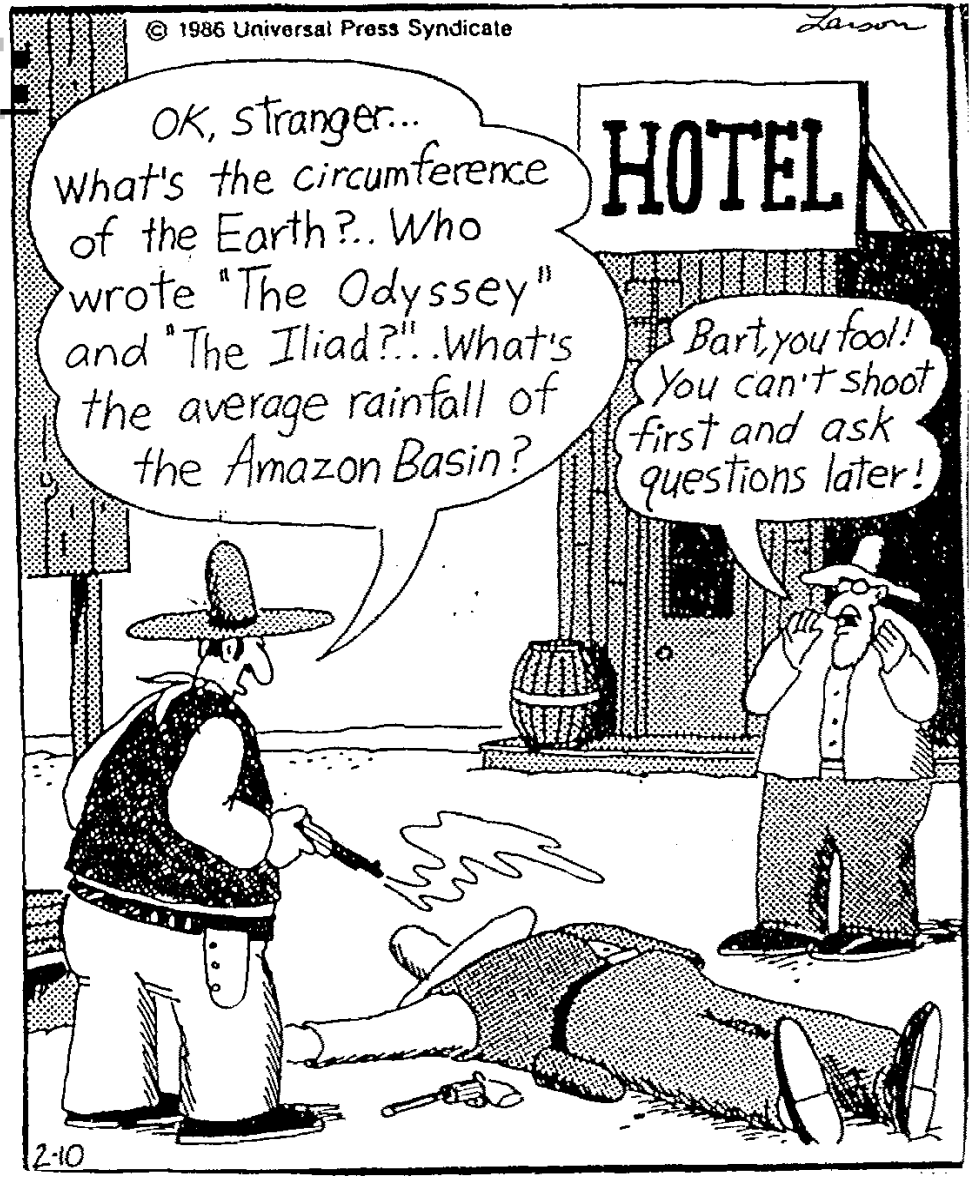
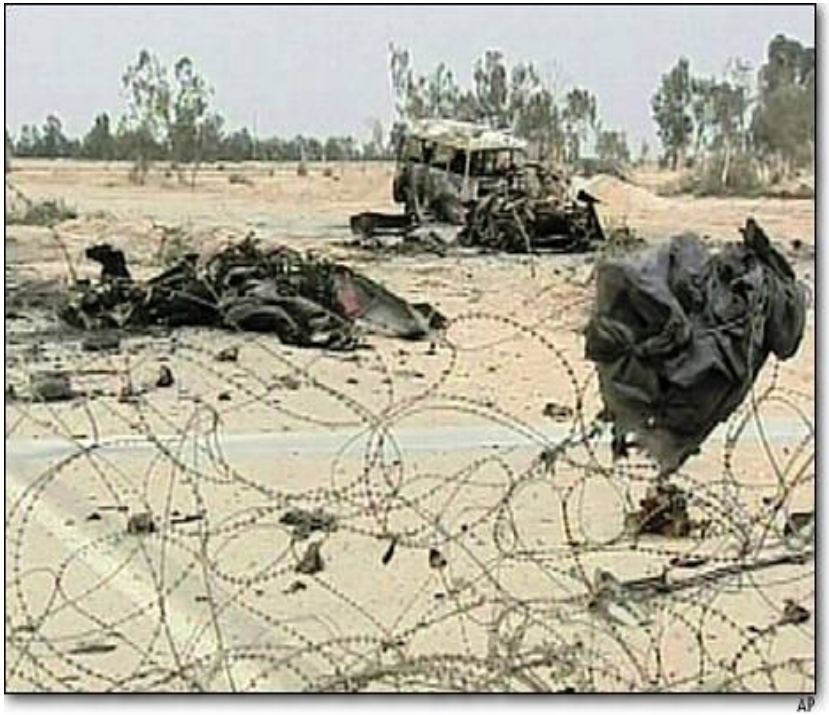
RULES OF ENGAGEMENT:


© 1986 Universal Press Syndicate
Larson
OK, stranger... What's the circumference of the Earth?.. Who wrote "The Odyssey" and "The Iliad?".. What's the average rainfall of the Amazon Basin?
HOTEL
Bart, you fool! You can't shoot first and ask questions later!
2-10

RULES OF ENGAGEMENT



RULES OF ENGAGEMENT

- **You have a**

  <u>RIGHT OF SELF-DEFENSE</u>

- **The ROE exist to:**
  - **<u>preserve your survival and safety</u>**
  - **maintain a stable international environment**

RULES OF ENGAGEMENT

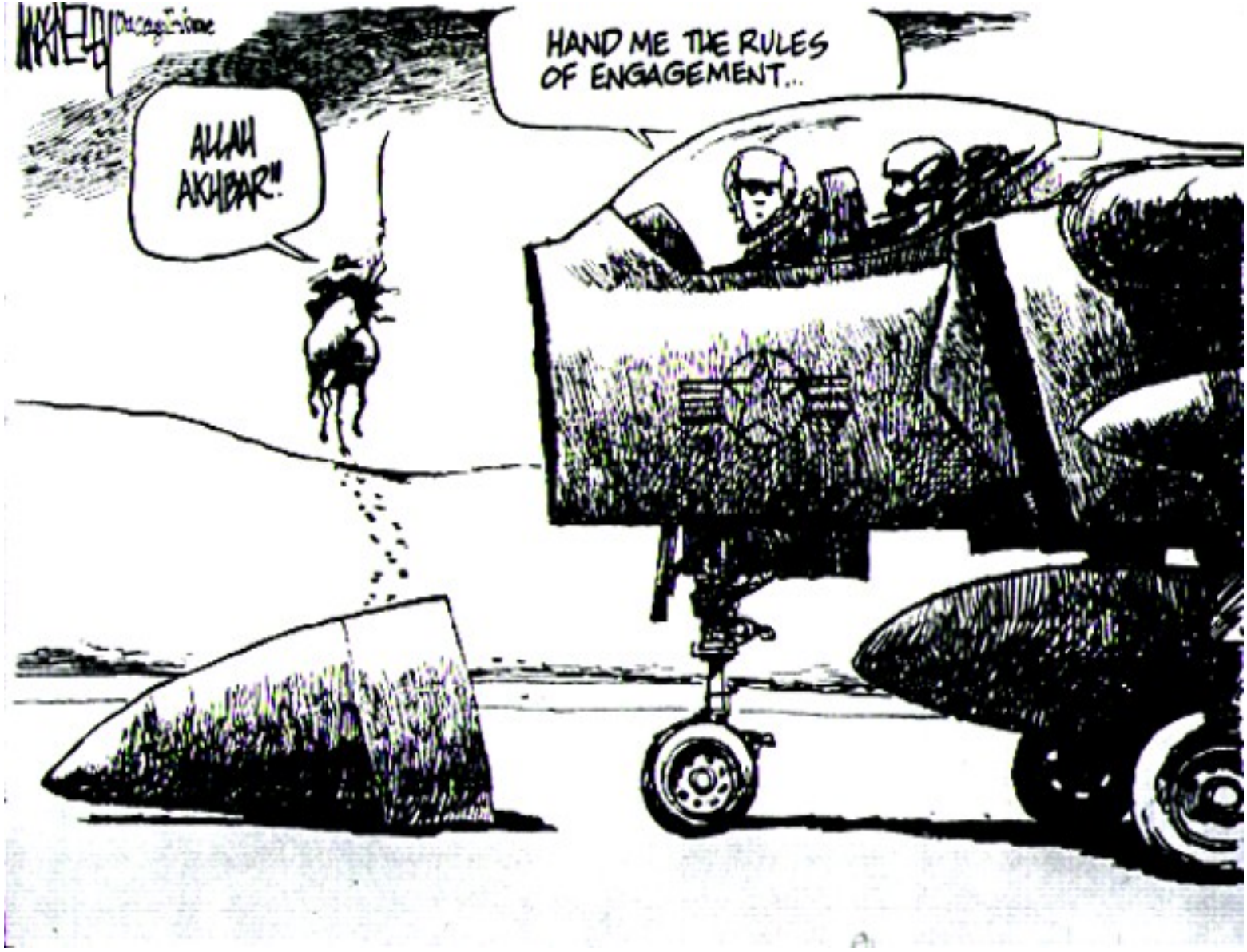
WHAT ARE ROE?

Standing ROE - Rules we must follow at all times.

Specific ROE - During a time of hostilities, ROE will be published to clarify the ROE for a specific theater/engagement. (ie: OIF ROE)

STANDING RULES OF ENGAGEMENT

You have the authority to take all <u>necessary</u> and <u>proportional</u> actions to defend yourself and other U.S. Forces in the area.


HAND ME THE RULES OF ENGAGEMENT...
ALLAH AKHBAR!!

SROE

JCS SROE (1 June 1999)

"These rules do not limit a commander's inherent authority and obligation to use all necessary means available and to take all appropriate action in self-defense of the commander's unit and other U.S. forces in the vicinity."

ROE - DEFINITION

“directives. . . that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.”

JOINT PUB 1-02, Dictionary of Military and Associated Terms

1C. On order, enemy military and paramilitary forces are declared hostile and may be attacked subject to the following instructions:

a. Positive Identification (PID) is required prior to engagement. PID is a reasonable certainty that the proposed target is a legitimate military target. If no PID, contact your next higher commander for decision.

b. Do not engage anyone who has surrendered or is out of battle due to sickness or wounds.

c. Do not target or strike any of the following except in self-defense to protect yourself, your unit friendly forces, and designated persons or property under your control:

-Civilians

-Hospitals, mosques, churches, shrines, schools, museums, national monuments, and any other historical and cultural sites.

d. Do not fire into civilian populated areas or buildings unless the enemy is using them for military purposes or if necessary for your self-defense. Minimize collateral damage.

e. Do not target enemy infrastructure (public works, commercial communication

OPERATION IRAQI FREEDOM

Economic Objects (commercial storage facilities, pipelines) unless necessary for self-defense or if ordered by your commander. If you must fire on these objects to engage a hostile force, disable and disrupt but avoid destruction of these objects, if possible.

2. The use of force, including deadly force, is authorized to protect the following:

-Yourself, your unit, and friendly forces

-Enemy Prisoners of War

-Civilians from crimes that are likely to cause death or serious bodily harm, such as murder or rape

-Designated civilians and/or property, such as personnel of the Red Cross/Crescent, UN, and US/UN supported organizations.

3. Treat all civilians and their property with respect and dignity. Do not seize civilian property, including vehicles, unless you have the permission of a company level commander and you give a receipt to the property's owner.

4. Detain civilians if they interfere with mission accomplishment or if required for self-defense.

5. CENTCOM General Order No. 1A remains in effect. Looting and the taking or war trophies are prohibited.

PURPOSES OF ROE GENERAL

- **Provide standing guidance on use of force in peacetime**
- **Control transition from peace to war**
- **Control combat operations in time of war**
- **Control transition from war to peace**

QUESTIONS